



STATE OF CONNECTICUT

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Honorable Members of the Judiciary Committee

From: Paul J. Knierim
Probate Court Administrator

Re: RB 1162 An Act Concerning the Adoption of Uniform Acts Relating
to the Disposition of Property and the Effectiveness of a Validly
Executed Power of Attorney

Date: April 15, 2013

Thank you for the opportunity to testify on Raised Bill 1162. The Office of the Probate Court Administrator is concerned with two provisions of the bill: sections 14 through 32, which would adopt the Uniform Real Property Transfer on Death Act, and section 33, which amends section 1-43 of the Statutory Short Form Power of Attorney Act.

Sections 14-32: Uniform Real Property Transfer on Death Act

The Uniform Real Property Transfer on Death Act would permit an owner of real estate to execute a transfer on death deed that designates one or more persons as beneficiaries who would receive the property on the death of the owner. Our primary concern with the proposal is that it does not synchronize with existing statutes that deal with a deceased owner's liabilities.

Section 28 makes real estate that would be disposed of by means of a transfer on death deed available for the payment of specified obligations of the deceased owner's estate if the estate is otherwise insufficient to pay them. This provision is inconsistent with existing Connecticut law in two significant ways. First, it limits

the liability of a transferee of real estate to the deceased owner's debts and any statutory allowance to a surviving spouse or child. It fails to make provision for other necessary expenses of a deceased owner's estate, including funeral expenses, expenses of administration and taxes. Second, the bill establishes an 18 month statute of limitations on bringing suit to enforce claims, in contrast to the two year statute of limitations applicable to decedent's estates. This creates the potential that real estate may pass to a designated beneficiary, despite the fact that valid debts of the deceased owner have not been satisfied.

We would also point out that the use of a transfer on death deed would affect the rights of a surviving spouse under section 45a-436. That statute provides that a surviving spouse may elect to receive a life interest in one-third of the deceased spouse's real property and other assets, regardless of the terms of the will. Because a transfer on death deed removes the real property from the decedent's estate, it effectively eliminates this right with respect to real property transferred in this manner.

Another area of concern is the boilerplate language "Probate is not required," which is contained in the form for transfer on death deeds under section 29. While partially true, the statement can be misleading. Connecticut law requires that an estate tax return be filed in the Probate Court for every decedent who dies owning any property, whether or not the property is part of the probate estate. Property that is the subject of a transfer on death deed is not a probate asset, but it must be reported on an estate tax return. If the total estate exceeds \$2 million, estate tax will be due. Even if the estate is less than the \$2 million threshold, the property will generate a probate fee. Failure to file the estate tax return and pay the probate fee and/or estate tax may result in interest and penalties. At a minimum, the form should be revised to alert the owner and beneficiaries of the requirement of a tax return and the obligation to pay the probate fee and any applicable estate tax. We suggest that the form should also include language to include a statement that the transferee may be liable for the decedent's debts.

Lastly, we are concerned that the potential for unintended consequences associated with transfer on death deeds may outweigh the benefits that the bill seeks to advance. We recognize that many citizens seek to arrange their affairs in a manner that reduces or eliminates the need for probate proceedings. On the other hand, Connecticut law already permits an individual to arrange for the transfer of real property outside of probate, including the ability to title property in joint survivorship or transfer it to an inter vivos trust. The establishment of yet another mechanism may cause considerable confusion. For example, a property owner may execute a transfer on death deed in favor of a beneficiary at one point in time and, years later, execute a will that purports to give the same real estate to another person. Unless the owner remembers to revoke the transfer on death deed, his or her intent to change the beneficiary will be thwarted. Another area of confusion concerns the burden of estate taxes and probate fees associated with

property that passes outside of probate. Because most Connecticut wills direct the executor to pay all estate taxes and administration expenses, the residuary beneficiaries of the probate estate may bear the burden of taxes and fees associated with property that they do not receive.

Section 33: Powers of Attorney

Section 33 of the bill would enable the grantor of a power of attorney to designate the "exclusive means" by which the power of attorney may be revoked. It appears that this language is intended to permit terms of a power of attorney to override the authority of a Probate Court to terminate the power of attorney by appointing a conservator. In doing so, the bill would eliminate a critical safeguard for an individual who becomes incapable after executing a power of attorney.

Under our existing statutes, a Probate Court will appoint a conservator only as a last resort. Section 45a-650(f) prohibits a court from appointing a conservator for an individual, even if he or she is incapable, if the court finds that the individual's affairs are being managed adequately through a power of attorney or other means. If, however, the court determines that an attorney in fact has failed to provide necessary assistance or is otherwise acting improperly, the court has the authority to appoint another person as conservator. Under section 45a-562(b), the establishment of the conservatorship has the effect of terminating the power of attorney. While most power of attorney arrangements function very well and avoid any need for conservatorship, Probate Courts are regularly confronted with situations in which conservators are needed to protect vulnerable citizens from neglectful or unscrupulous attorneys in fact.

Accordingly, we recommend that the committee not adopt section 33 of the bill.